UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., Plaintiff, vs. MICRON TECHNOLOGY, INC.; MICRON SEMICONDUCTOR PRODUCTS, INC.; MICRON TECHNOLOGY TEXAS LLC, Defendants.	)	Civil Action No. 2:22-cv-203-JRG **JURY TRIAL DEMANDED**

MICRON'S REPLY IN SUPPORT OF ITS REQUEST FOR ORAL ARGUMENT (DKT. 382)

Micron replies to Netlist's Response to Micron's Request for Oral Argument to correct Netlist's false statement that the issue was not presented in the pretrial conference order. Response at 1. The Joint Final Pre-Trial Order (Dkt. No. 354) specifically identifies Micron's Motion to Stay (Dkt. 348 "Defendants' Motion to Stay") and states that the "Parties request that the pending motions listed above be heard at or before the Pretrial Conference, as they would directly impact the trial.") Dkt. No. 354 at 21-22 (emphasis added).

Netlist is also incorrect in arguing that "Micron's request at this point appears to be a tactic designed to detract from the pretrial conference." Response at 1. Not so. Netlist's entire case involves asserting two patents that were recently found invalid by the PTAB (U.S. Patent Nos. 11,232,054 and 11,016,918) and two other patents on products where there are no sales (U.S. Patent Nos. 8,787,060 and 9,318,160). This case is not ready for trial and Micron's Motion to Stay should be the first and only thing argued at the Pre-Trial Conference. Doing so could obviate the entirety of other issues at issue in the Pre-Trial Conference and conserve substantial party and judicial resources. Further, the issues of Netlist attempting to assert (i) invalid patents and (ii) patents against products with no sales, permeates many of the issues to be resolved at the Pre-Trial Conference, including at least: disputes regarding the witness lists inclusion of witnesses relevant to the invalid patents, disputes regarding the exhibits relating to the invalid patents, Micron's motion to strike Netlist's damages expert's speculation as to potential future damages on projected sales from 2024-2028 (Dkt. No. 273), and numerous other motions that relate solely to issues that should be moot now that two of Netlist's patents have been found invalid.

Staying a case that involves invalid patents is in the best interests of Micron, the Court, the potential jury, and even Netlist itself as it will give Netlist time to pursue an appeal if it so

chooses[1] while avoiding the costs associated with a potentially moot trial. Alternatively, should the Court not grant Micron's Daubert motion seeking to strike Netlist's expert from speculating as to future damages (Dkt. No. 273), the Court could sever and stay the invalid '918 and '054 patents and this time and proceed to trial on the '060 and '160 patents alone.

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Respectfully submitted,

/s/ Michael R. Rueckheim

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[1] It is highly unlikely that Netlist would be successful upon appeal as the PTAB invalidated the patents on three independent grounds and recent statistics show that the Federal Circuit affirms the PTAB approximately 70% of the time.

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CERTIFICATE OF SERVICE

I hereby certify that, on December 15, 2023, a copy of the foregoing was served on all counsel of record via the Court's ECF system and email.

/s/ Michael R. Rueckheim
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